

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAMON COATS and EVELYN
MICHELLE FLORES,
Plaintiffs,
v.
CITY OF COSTA MESA et al.,
Defendants. } Case No. 8:24-cv-02337-JVS-JDE
} STIPULATION AND PROPOSED
PROTECTIVE ORDER

Based on the Parties' Stipulation (Dkt. 24) and for good cause shown, the Court finds and orders as follows.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than pursuing this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

1 2. GOOD CAUSE STATEMENT

2 This action is likely to involve discovery that is confidential and
3 privileged for which special protection from public disclosure and from use for
4 any purpose other than prosecution of this action may be warranted. Such
5 confidential and proprietary materials and information consist of, among other
6 things, information pertaining to Costa Mesa Police Department's (CMPD)
7 investigation of the underlying criminal activities, as well as peace officer
8 personnel file information and/or documents which the parties agree include
9 (1) Personal data, including marital status, family members, educational and
10 employment history, home addresses, or similar information; (2) Medical
11 history; (3) Election of employee benefits; (4) Employee advancement,
12 appraisal or discipline; and (5) Complaints, or investigations of complaints, if
13 any, concerning an event or transaction in which a peace officer participated,
14 or which a peace officer perceived, and pertaining to the manner in which the
15 peace officer performed his or her duties.

16 Such confidential materials and information consist of, among other
17 things, materials which may be entitled to privileges and/or protections under
18 the following: United States Constitution, First Amendment; the California
19 Constitution, Article I, Section 1; California Penal Code §§ 832.5, 832.7 and
20 832.8; California Evidence Code §§ 1040 and 1043 et. seq; the Privacy Act of
21 1974, 5 U.S.C. § 552; Health Insurance Portability and Accountability Act of
22 1996 (HIPPA); the right to privacy; decisional law relating to such provisions;
23 and information otherwise generally unavailable to the public, or which may
24 be privileged or otherwise protected from disclosure under state or federal
25 statutes, court rules, case decisions, or common law.

26 Defendant also contends that such confidential materials and
27 information are entitled to the Official Information Privilege. Sanchez v. City
28 of Santa Ana, 936 F.2d 1027, 1033 (9th Cir. Cal.1990); see also Kerr v. United

1 States Dist. Ct. for N.D. Cal., 511 F.2d 192, 198 (9th Cir. Cal. 1975). Aff'd,
2 426 U.S. 394, 96 S. Ct. 3229, 48 L.Ed.2d 725 (1976). The information
3 otherwise may be generally unavailable to the public, or may be privileged or
4 otherwise protected from disclosure under state or federal statutes, court rules,
5 case decisions, or common law.

6 Further, discovery may require depositions, written discovery and/or the
7 production of certain information the public disclosure of which could
8 comprise officer safety, and/or raise security issues. Additionally, public
9 disclosure of such information poses a substantial risk of embarrassment,
10 oppression, and/or physical harm to peace officers whose confidential
11 information is disclosed. The risk of harm to peace officers is greater than with
12 other government employees due to the nature of their profession. The benefit
13 of public disclosure of confidential information is minimal while the potential
14 disadvantages are great.

15 Accordingly, to expedite the flow of information, to facilitate the prompt
16 resolution of disputes over confidentiality of discovery materials, to adequately
17 protect information the parties are entitled to keep confidential, to ensure that
18 the parties are permitted reasonable necessary uses of such material in
19 preparation for and in the conduct of trial, to address their handling at the end
20 of the litigation, and serve the ends of justice, a protective order for such
21 information is justified in this matter. It is the intent of the parties that
22 information will not be designated as confidential for tactical reasons and that
23 nothing be so designated without a good faith belief that it has been
24 maintained in a confidential, non-public manner, and there is good cause why
25 it should not be part of the public record of this case.

26 3. ACKNOWLEDGMENT OF UNDER SEAL FILING

27 The parties further acknowledge, as set forth in Section 14.3, below, that
28 this Stipulated Protective Order does not entitle them to file confidential

1 information under seal; Local Civil Rule 79-5 sets forth the procedures that
2 must be followed and the standards that will be applied when a party seeks
3 permission from the court to file material under seal. There is a strong
4 presumption that the public has a right of access to judicial proceedings and
5 records in civil cases. In connection with non-dispositive motions, good cause
6 must be shown to support a filing under seal. See Kamakana v. City and
7 County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen.
8 Motors Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony
9 Electrics, Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
10 protective orders require good cause showing), and a specific showing of good
11 cause or compelling reasons with proper evidentiary support and legal
12 justification, must be made with respect to Protected Material that a party
13 seeks to file under seal. The parties' mere designation of Disclosure or
14 Discovery Material as CONFIDENTIAL does not— without the submission
15 of competent evidence by declaration, establishing that the material sought to
16 be filed under seal qualifies as confidential, privileged, or otherwise
17 protectable—constitute good cause.

18 Further, if a party requests sealing related to a dispositive motion or trial,
19 then compelling reasons, not only good cause, for the sealing must be shown,
20 and the relief sought shall be narrowly tailored to serve the specific interest to
21 be protected. See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th
22 Cir. 2010). For each item or type of information, document, or thing sought to
23 be filed or introduced under seal, the party seeking protection must articulate
24 compelling reasons, supported by specific facts and legal justification, for the
25 requested sealing order. Again, competent evidence supporting the application
26 to file documents under seal must be provided by declaration.

27 Any document that is not confidential, privileged, or otherwise
28 protectable in its entirety will not be filed under seal if the confidential portions

1 can be redacted. If documents can be redacted, then a redacted version for
2 public viewing, omitting only the confidential, privileged, or otherwise
3 protectable portions of the document, shall be filed. Any application that seeks
4 to file documents under seal in their entirety should include an explanation of
5 why redaction is not feasible.

6 4. DEFINITIONS

7 4.1 Action: Damon Coats, an individual; and Evelyn M. Flores, an
8 individual, v. City of Costa Mesa, a municipal entity; Officer M. Gonzales
9 #P678, an individual; Officer D. Bruno #P683, an individual; Officer
10 Christopher James Greeley, an individual; and DOES 4 through 10 inclusive.

11 4.2 Challenging Party: a Party or Non-Party that challenges
12 the designation of information or items under this Order.

13 4.3 “CONFIDENTIAL” Information or Items: information
14 (regardless of how it is generated, stored or maintained) or tangible things that
15 qualify for protection under Federal Rule of Civil Procedure 26(c), and as
16 specified above in the Good Cause Statement.

17 4.4 Counsel: Outside Counsel of Record and House Counsel (as well
18 as their support staff).

19 4.5 Designating Party: a Party or Non-Party that designates
20 information or items that it produces in disclosures or in responses to discovery
21 as “CONFIDENTIAL.”

22 4.6 Disclosure or Discovery Material: all items or information,
23 regardless of the medium or manner in which it is generated, stored, or
24 maintained (including, among other things, testimony, transcripts, and tangible
25 things), that are produced or generated in disclosures or responses to discovery.

26 4.7 Expert: a person with specialized knowledge or experience in a
27 matter pertinent to the litigation who has been retained by a Party or its
28 counsel to serve as an expert witness or as a consultant in this Action.

1 4.8 House Counsel: attorneys who are employees of a party to this
2 Action. House Counsel does not include Outside Counsel of Record or any
3 other outside counsel.

4 4.9 Non-Party: any natural person, partnership, corporation,
5 association or other legal entity not named as a Party to this action.

6 4.10 Outside Counsel of Record: attorneys who are not
7 employees of a party to this Action but are retained to represent a party to this
8 Action and have appeared in this Action on behalf of that party or are affiliated
9 with a law firm that has appeared on behalf of that party, and includes support
10 staff.

11 4.11 Party: any party to this Action, including all of its officers,
12 directors, employees, consultants, retained experts, and Outside Counsel of
13 Record (and their support staffs).

14 4.12 Producing Party: a Party or Non-Party that produces
15 Disclosure or Discovery Material in this Action.

16 4.13 Professional Vendors: persons or entities that provide
17 litigation support services (e.g., photocopying, videotaping, translating,
18 preparing exhibits or demonstrations, and organizing, storing, or retrieving
19 data in any form or medium) and their employees and subcontractors.

20 4.14 Protected Material: any Disclosure or Discovery Material
21 that is designated as “CONFIDENTIAL.”

22 4.15 Receiving Party: a Party that receives Disclosure or
23 Discovery Material from a Producing Party.

24 5. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.

2 Any use of Protected Material at trial shall be governed by the orders of
3 the trial judge and other applicable authorities. This Order does not govern the
4 use of Protected Material at trial.

5 6. DURATION

6 Once a case proceeds to trial, information that was designated as
7 CONFIDENTIAL or maintained pursuant to this protective order used or
8 introduced as an exhibit at trial becomes public and will be presumptively
9 available to all members of the public, including the press, unless compelling
10 reasons supported by specific factual findings to proceed otherwise are made to
11 the trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81
12 (distinguishing “good cause” showing for sealing documents produced in
13 discovery from “compelling reasons” standard when merits-related documents
14 are part of court record). Accordingly, the terms of this protective order do not
15 extend beyond the commencement of the trial.

16 7. DESIGNATING PROTECTED MATERIAL

17 7.1 Exercise of Restraint and Care in Designating Material for
18 Protection. Each Party or Non-Party that designates information
19 or items for protection under this Order must take care to limit any such
20 designation to specific material that qualifies under the appropriate standards.
21 The Designating Party must designate for protection only those parts of
22 material, documents, items or oral or written communications that qualify so
23 that other portions of the material, documents, items or communications for
24 which protection is not warranted are not swept unjustifiably within the ambit
25 of this Order.

26 Mass, indiscriminate or routinized designations are prohibited.
27 Designations that are shown to be clearly unjustified or that have been made
28 for an improper purpose (e.g., to unnecessarily encumber the case development

1 process or to impose unnecessary expenses and burdens on other parties) may
2 expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items
4 that it designated for protection do not qualify for protection, that Designating
5 Party must promptly notify all other Parties that it is withdrawing the
6 inapplicable designation.

7 7.2 Manner and Timing of Designations. Except as otherwise
8 provided in this Order, or as otherwise stipulated or ordered, Disclosure of
9 Discovery Material that qualifies for protection under this Order must be
10 clearly so designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix at a minimum, the legend
15 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page
16 that contains protected material. If only a portion of the material on a page
17 qualifies for protection, the Producing Party also must clearly identify the
18 protected portion(s) (e.g., by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents available for
20 inspection need not designate them for protection until after the inspecting
21 Party has indicated which documents it would like copied and produced.
22 During the inspection and before the designation, all of the material made
23 available for inspection shall be deemed "CONFIDENTIAL." After the
24 inspecting Party has identified the documents it wants copied and produced,
25 the Producing Party must determine which documents, or portions thereof,
26 qualify for protection under this Order. Then, before producing the specified
27 documents, the Producing Party must affix the "CONFIDENTIAL legend" to
28 each page that contains Protected Material. If only a portion of the material on

1 a page qualifies for protection, the Producing Party also must clearly identify
2 the protected portion(s) (e.g., by making appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party
4 identifies the Disclosure or Discovery Material on the record, before the close
5 of the deposition all protected testimony.

6 (c) for information produced in some form other than
7 documentary and for any other tangible items, that the Producing Party affix
8 in a prominent place on the exterior of the container or containers in which the
9 information is stored the legend "CONFIDENTIAL." If only a portion or
10 portions of the information warrants protection, the Producing Party, to the
11 extent practicable, shall identify the protected portion(s).

12 7.3 Inadvertent Failures to Designate. If timely corrected, an
13 inadvertent failure to designate qualified information or items does not,
14 standing alone, waive the Designating Party's right to secure protection under
15 this Order for such material. Upon timely correction of a designation, the
16 Receiving Party must make reasonable efforts to assure that the material is
17 treated in accordance with the provisions of this Order.

18 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court's
21 Scheduling Order.

22 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37-1 et seq.

24 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
25 joint stipulation pursuant to Local Rule 37-2.

26 8.4 The burden of persuasion in any such challenge proceeding shall be
27 on the Designating Party. Frivolous challenges, and those made for an

1 improper purpose (e.g., to harass or impose unnecessary expenses and burdens
2 on other parties) may expose the Challenging Party to sanctions. Unless the
3 Designating Party has waived or withdrawn the confidentiality designation, all
4 parties shall continue to afford the material in question the level of protection
5 to which it is entitled under the Producing Party's designation until the Court
6 rules on the challenge.

7 9. ACCESS TO AND USE OF PROTECTED MATERIAL

8 9.1 Basic Principles. A Receiving Party may use Protected Material that
9 is disclosed or produced by another Party or by a Non-Party in connection
10 with this Action only for prosecuting, defending or attempting to settle this
11 Action. Such Protected Material may be disclosed only to the categories of
12 persons and under the conditions described in this Order. When the Action has
13 been terminated, a Receiving Party must comply with the provisions of section
14 15 below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party
16 at a location and in a secure manner that ensures that access is limited to the
17 persons authorized under this Order.

18 9.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
19 otherwise ordered by the court or permitted in writing by the Designating
20 Party, a Receiving Party may disclose any information or item designated
21 "CONFIDENTIAL" only to:

22 (a) the Receiving Party's Outside Counsel of Record in this
23 Action, as well as employees of said Outside Counsel of Record to whom it is
24 reasonably necessary to disclose the information for this Action;

25 (b) the officers, directors, and employees (including House
26 Counsel) of the Receiving Party to whom disclosure is reasonably necessary
27 for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A)

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and

Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of records containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, on to whom disclosure is reasonably necessary provided: (1) the party requests that the witness sign the form attached as Exhibit A (2) they will not be permitted to keep any confidential information sign the “Acknowledgment and Agreement to Be Bound” (Exhibit otherwise agreed by the Designating Party or ordered by the court.

Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order; and

(i) mediators or settlement officers and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment an Agreement to Be Bound” attached hereto as Exhibit A.

1 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
2 OTHERWISE PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the Receiving Parties are those set forth in
6 Federal Rule of Civil\ Procedure 26(b)(5)(B). This provision is not intended to
7 modify whatever procedure may be established in an e-discovery order that
8 provides for production without prior privilege review. Pursuant to Federal
9 Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on
10 the effect of disclosure of a communication or information covered by the
11 attorney-client privilege or work product protection, the parties may
12 incorporate their agreement in the stipulated protective order submitted to the
13 court.

14 14. MISCELLANEOUS

15 14.1 Right to Further Relief. Nothing in this Order abridges the right of
16 any person to seek its modification by the Court in the future.

17 14.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order, no Party waives any right it otherwise would have to object
19 to disclosing or producing any information or item on any ground not
20 addressed in this Stipulated Protective Order. Similarly, no Party waives any
21 right to object on any ground to use in evidence of any of the material covered
22 by this Protective Order.

23 14.3 Filing Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Local Civil Rule 79-5. Protected
25 Material may only be filed under seal pursuant to a court order authorizing the
26 sealing of the specific Protected Material. If a Party's request to file Protected
27 Material under seal is denied by the court, then the Receiving Party may file
28 the information in the public record unless otherwise instructed by the court.

1 15. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in paragraph 6,
3 within 60 days of a written request by the Designating Party, each Receiving
4 Party must return all Protected Material to the Producing Party or destroy such
5 material. As used in this subdivision, “all Protected Material” includes all
6 copies, abstracts, compilations, summaries, and any other format reproducing
7 or capturing any of the Protected Material. Whether the Protected Material is
8 returned or destroyed, the Receiving Party must submit a written certification
9 to the Producing Party (and, if not the same person or entity, to the
10 Designating Party) by the 60-day deadline that (1) identifies (by category,
11 where appropriate) all the Protected Material that was returned or destroyed
12 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
13 compilations, summaries or any other format reproducing or capturing any of
14 the Protected Material. Notwithstanding this provision, Counsel are entitled to
15 retain an archival copy of all pleadings, motion papers, trial, deposition, and
16 hearing transcripts, legal memoranda, correspondence, deposition and trial
17 exhibits, expert reports, attorney work product, and consultant and expert
18 work product, even if such materials contain Protected Material. Any such
19 archival copies that contain or constitute Protected Material remain subject to
20 this Protective Order as set forth in Section 6 (DURATION).

21 16. VIOLATION

22 Any violation of this Order may be punished by appropriate measures
23 including contempt proceedings and/or monetary sanctions.

24 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

25 DATED: February 18, 2025

26 
27 JOHN D. EARLY
28 United States Magistrate Judge